

1 PHILLIP A. TALBERT  
United States Attorney  
2 DAVID L. GAPP  
Assistant United States Attorney  
3 2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
4 Telephone: (559) 497-4000  
Facsimile: (559) 497-4099  
5  
6 Attorneys for Plaintiff  
United States of America

7  
8  
9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
v.  
14 GARY BRIGGS,  
15 Defendant.

CASE NO. 1:20-CR-00041-JLT-SKO  
STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER  
PROPOSED TRIAL DATE: July 25, 2023  
TIME: 8:30 a.m.  
COURT: Hon. Jennifer L. Thurston

16  
17 This case is set for a status conference on October 5, 2022, but the parties have agreed to  
18 schedule a trial to start July 25, 2023, at 8:30 a.m. The parties have cleared this date with the district  
19 court. On May 13, 2020, this Court issued General Order 618, which suspended all jury trials in the  
20 Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise  
21 his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the  
22 court’s prior General Order 611 issued on March 17, 2020, . . . with additional findings to support the  
23 exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any  
24 judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that  
25 Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the  
26 extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13,  
27 2020). The court issued General Order 655 on September 19, 2022, which found that public health  
28 conditions had not improved significantly and justified an additional ninety-day extension of previous

orders related to court proceedings.

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the general orders require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The general orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001, terrorist attacks and the resultant public emergency).

The coronavirus pandemic poses a similar, albeit more enduring, “appreciable difficulty” to the prompt proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, 21 F.4th 1036, 1047 (9th Cir. 2022). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

1 In light of the societal context created by the foregoing, this court should consider the following  
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
3 justice exception, § 3161(h)(7). When continued, this court should designate a new date for the hearing.  
4 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
5 “specifically limited in time”).

6 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
7 through defendant’s counsel of record, accordingly stipulate as follows:

8 1. By previous order this matter was set for a status conference hearing on October 5, 2022.  
9 The Court more recently has invited a continuance of this hearing if counsel have agreed on a date for  
10 the start of a trial.

11 2. By this stipulation, the parties agree that the trial be scheduled to begin July 25, 2023,  
12 and to exclude time between October 5, 2022, and July 25, 2023, under 18 U.S.C. §§ 3161(h)(7)(A) and  
13 3161(h)(7)(B)(i), (ii) and (iv). The parties stipulate, and request that the court find the following:

14 a) Counsel for defendant desires additional time to consult with his client, to review  
15 the current charges and conduct additional investigation and research related to the charges, to  
16 discuss potential resolutions with his client, and to evaluate and potentially prepare pretrial  
17 motions. Access to the defendant has been limited by various quarantines at the Fresno County  
18 Jail, and this has impeded resolution of this case.

19 b) Counsel for defendant believes that failure to grant the above-requested  
20 continuance would deny him the reasonable time necessary for effective preparation, taking into  
21 account the exercise of due diligence.

22 c) The government does not object to the continuance and joins in the request.

23 d) In addition to the public health concerns cited by General Orders 611, 612, 617,  
24 and 655 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly  
25 apt in this case because counsel or other relevant individuals have been encouraged to telework  
26 and minimize personal contact to the greatest extent possible. It will be difficult to avoid  
27 personal contact should the hearing proceed. For these reasons, the court has encouraged the  
28 parties to enter this stipulation.

1 e) Based on the above-stated findings, the ends of justice are served by continuing  
2 the case as requested and outweigh the interest of the public and the defendant in a trial within  
3 the original date prescribed by the Speedy Trial Act.

4 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
5 et seq., within which trial must commence, the time period between October 5, 2022, to July 25,  
6 2023, inclusive, is deemed excludable under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it  
7 results from a continuance granted by the court at defendant's request on the basis of the court's  
8 finding that the ends of justice served by taking such action outweigh the best interest of the  
9 public and the defendant in a speedy trial.

10 3. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
11 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
12 must commence.

13 IT IS SO STIPULATED.

14  
15 Dated: October 3, 2022

PHILLIP A. TALBERT  
United States Attorney

17  
18 /s/ DAVID L. GAPPA  
DAVID L. GAPPA  
Assistant United States Attorney

19  
20  
21 Dated: October 3, 2022

/s/ MARK BROUGHTON  
MARK BROUGHTON  
Counsel for Defendant  
GARY BRIGGS

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
GARY BRIGGS,  
  
Defendant.

CASE NO. 1:20-CR-00041 JLT-SKO  
  
ORDER  
  
TRIAL DATE: July 25, 2023  
TIME: 8:30 a.m.  
COURT: Hon. Jennifer L. Thurston

**ORDER**

The Court has reviewed and considered the stipulation filed by the parties on October 3, 2022, and also reviewed the record of this case. For the reasons stated in the stipulation the period of time from October 3, 2022, to July 25, 2023, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at the request of the parties on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

DATED: 10/4/2022

*Sheila K. Oberto*  
\_\_\_\_\_  
THE HONORABLE SHEILA K. OBERTO  
UNITED STATES MAGISTRATE JUDGE